



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 9, 1997

Mr. John Steiner
Division Chief
City of Austin
P.O. Box 1088
Austin, Texas 78767-1088

OR97-0035

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102865.

The City of Austin (the "city") received a request for all correspondence from Moira Dolan to the Austin City Council Members or the Austin Police Department and related documents and for all documents relating to the requestor or Amy E. Henry. You state that some of the requested information will be released to the requestor. However, you claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). We note, however, that information normally found on the front page of an offense report is generally considered public.¹ *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). With the exception of front page offense report information, section 552.108 of the Government Code excepts

¹The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*.

some of the requested records from required public disclosure. We have marked the documents to which section 552.108 applies.²

You also claim that some of the requested information is excepted under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 143.089 of the Local Government Code contemplates two different types of personnel files, one that the police department is required to maintain as part of the police officer's civil service file, and one that the police department may maintain for its own internal use. Local Gov't Code § 143.089(a), (g). You state that the information here is part of a file which is maintained by the police department for its own internal use under section 143.089(g).

Section 143.089(g) provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

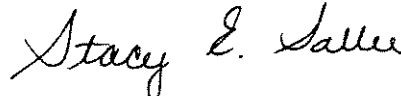
In *City of San Antonio v. Texas Attorney Gen.*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by the city police department for its use and addressed the applicability of section 143.089(g) to that file. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. You state that the investigation here is pending. Therefore, this submitted information must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code.³

²We cannot determine if one of the documents submitted to this office is responsive to the request. If it is responsive, the city may withhold all but first page offense report information on that document under section 552.108 of the Government Code. Additionally, as we have concluded that the city may withhold under section 552.108 the information which the city claims is also excepted under section 552.103, we need not address your claims under section 552.103.

³We also note that section 143.089(g) requires a police department who receives a request for information maintained in a file under section 143.089(g) to refer that person to the civil service director or the director's designee.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 102865

Enclosures: Submitted documents

cc: Mr. James R. Ellinger
P.O. Box 50018
Austin, Texas 78763
(w/o enclosures)